

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOSEPH EDWARD CAMARGO,
Petitioner.

No. 2 CA-CR 2015-0081-PR
Filed June 19, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County

No. CR20102732001

The Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Barton & Storts, P.C., Tucson
By Brick P. Storts, III
Counsel for Petitioner

STATE v. CAMARGO
Decision of the Court

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

E C K E R S T R O M, Chief Judge:

¶1 Petitioner Joseph Camargo seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Camargo has not sustained his burden of establishing such abuse here.

¶2 After a jury trial in absentia, Camargo was convicted of possession of a deadly weapon by a prohibited possessor. The trial court ultimately imposed a presumptive, ten-year prison term and this court affirmed his conviction and sentence on appeal. *State v. Camargo*, No. 2 CA-CR 2011-0399 (memorandum decision filed Oct. 29, 2013).

¶3 Camargo initiated a proceeding for post-conviction relief, arguing in his petition that he had received ineffective assistance of trial counsel based on counsel's failure to request a jury instruction "that the state bore the burden of proving that the justification of necessity defense did not apply." The trial court summarily denied relief, concluding Camargo could not establish prejudice arising from counsel's failure to request the instruction because this court had previously rejected, in the context of fundamental error review, Camargo's contention that the absence of the instruction was prejudicial.

¶4 On review, Camargo argues the trial court abused its discretion summarily denying his petition, because the prejudice required to establish reversible, fundamental error is a "different

STATE v. CAMARGO
Decision of the Court

standard” than that required to obtain relief based on ineffective assistance of counsel. Although we agree it is possible the two standards for prejudice may not at all times align, we cannot agree that the court’s conclusion in this case was an abuse of discretion.

¶5 To establish prejudice under the *Strickland* standard, a defendant must show “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland v. Washington*, 466 U.S. 668, 694 (1984). The test for prejudice in relation to fundamental-error review, however, is “a fact-intensive inquiry, and the showing required to establish prejudice therefore differs from case to case.” *State v. Henderson*, 210 Ariz. 561, ¶ 26, 115 P.3d 601, 608 (2005). In the context of reviewing jury instructions for fundamental error, a defendant “must show that a reasonable, properly instructed jury ‘could have reached a different result.’ In determining whether a defendant has shown prejudice, the court considers the parties’ theories, the evidence received at trial and the parties’ arguments to the jury.” *State v. Dickinson*, 233 Ariz. 527, ¶ 13, 314 P.3d 1282, 1286 (App. 2013) (citation omitted), quoting *State v. James*, 231 Ariz. 490, ¶ 15, 297 P.3d 182, 186 (App. 2013).

¶6 In this case, having concluded in our decision on appeal that no reasonable jury could have reached a different result if properly instructed, we cannot say the trial court erred in concluding there was not a reasonable probability that the result would have been different but for counsel’s error and the absence of the instruction. The trial court therefore did not abuse its discretion in summarily denying Camargo relief on his claim of ineffective assistance of counsel.

¶7 Thus, although we grant the petition for review, we deny relief.